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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 523/2012

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	Mr. X (represented by the Refugee Advice Centre)
Alleged victim:	The complainant
State party:	Finland
Date of complaint:	24 October 2012 (initial submission)
Date of present decision:	23 November 2015
Subject matter:	Expulsion to Angola
Procedural issues:	Exhaustion of domestic remedies, non-substantiation of the claim
Substantive issue:	Risk of torture upon return to the country of origin
Article of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 523/2012*

Submitted by:	Mr. X (represented by the Refugee Advice Centre)
Alleged victim:	The complainant
State party:	Finland
Date of complaint:	24 October 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2015,

Having concluded its consideration of complaint No. 523/2012, submitted to it by Mr. X, under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant of the communication is Mr. X, a national of Angola, born in 1979. His request for asylum in Finland was rejected and he risks forcible removal to Angola. The complainant claims that his deportation would violate his rights under article 3 of the Convention. The complainant is represented by counsel from the Refugee Advice Centre.

1.2 On 25 October 2012, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to refrain from expelling the complainant to Angola while his complaint was under consideration by the Committee. On 20 December 2012 the State party agreed to refrain temporarily from deporting the complainant.

Facts as presented by the complainant

2.1 The complainant submits that he was born in Cabinda and belongs to the Baluba tribe. He does not know his father, his mother was a social worker in an aid organization in Cabinda. In 1982, when the complainant was three years old, government soldiers shot his mother. After that his grandmother escaped from Cabinda to Lobito with him. The

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

grandmother died in 1994. The complainant made a living selling goods and washing cars in Lobito.

2.2 The complainant submits that in 2000, he joined the Front for the Liberation of the Enclave of Cabinda (Frente de Libertação do Enclave de Cabinda). He was an active member of the Front for four years before fleeing from Angola. He was working in a group of 10 persons in Lobito. They met in members' houses once a week and collected money each month from each member. With that money, they bought medication, wood and other goods, which they sent to fighters belonging to the Front in Cabinda. They also collected information about government troops and military planes in the Cabinda area. Three members of the group were recruited to fight in Cabinda and later died in fighting.

2.3 The complainant further submits that on an unspecified date, government soldiers arrested him in the street as he was going to a meeting of the Front. They found a recruitment pamphlet for the Front in his possession. He was brutally beaten with rifle butts and his neck stamped on with boots and was then brought to a prison in Lobito. The conditions in the prison were inhuman. He was kept for about a month in solitary confinement with minimal food and without any care for his injuries. In addition, he was kept awake. He expected that he would die while in detention. After a while, he was allowed to take a brief walk outside. He promised a prison guard to give him a bribe to let him escape and the guard agreed.[1] On an unspecified date the complainant escaped from prison and fled to Luanda. Soon after, he fled from Angola with the assistance of a "dealer". He arrived in Finland on 14 September 2009 and applied for asylum the same day.

2.4 The complainant submits that, according to medical certificates issued by Dr. Kaarin Sorvari of the Centre for Torture Survivors on 12 October 2010 and 6 June 2011, he is suffering from post-traumatic stress disorder, resulting from torture and traumatizing experiences, serious depression, "neck and head syndrome" and heart problems. The complainant has lost weight, he sleeps poorly and has thoughts of suicide. He submits that he needs intensive mental health and medical care and that he does not have the possibility of getting proper health care in Angola. Furthermore, he has provided a medical certificate dated 12 October 2011, which states that his health deteriorated during the asylum proceedings, the trauma symptoms worsened and his depression became even worse. As a result of serious stress, the complainant also started experiencing heart problems.

2.5 The complainant applied for asylum in Finland on 14 September 2009. The Directorate of Immigration rejected his application on 11 October 2010 and the Helsinki Administrative Court rejected an appeal against this decision on 16 September 2011. On 27 September 2011, the complainant applied for leave to appeal to the Supreme Administrative Court and made a request to stop his deportation. On 19 October 2011, the Supreme Administrative Court postponed the deportation pending its review of the case, but on 12 October 2012 it rejected his request for leave to appeal and the deportation order became executable.[2] The complainant contends that he can be deported at any moment.

[1] The complainant claims that he paid the bribe to the prison guard later, in his home, where he had money.

[2] The complainant submits that, according to section 196 of the Finnish Aliens Act (301/2004), a decision of the Administrative Court can be appealed to the Supreme Administrative Court only if the Supreme Administrative Court grants a leave to appeal. According to section 200 of the Act, applying for leave to appeal to the Supreme Administrative Court does not prevent the enforcement of a decision, unless otherwise ordered by the Supreme Administrative Court. After the decision by the Supreme Administrative Court there is no other domestic remedy available and the deportation order becomes executable immediately.

The complaint

3.1 The complainant submits that his deportation would violate his rights under article 3 of the Convention. The complainant submits numerous references to reports, testifying to the existence of gross, flagrant and mass violations of human rights in Angola to justify his fear of torture if he is forcibly returned to Angola.[3]

3.2 The complainant submits that his application for asylum has been rejected because the Finnish Immigration Service and the Helsinki Administrative Court found that he was not able to give cohesive answers to all the questions they asked. He submits however, that certain inconsistencies are inherent to traumatized victims of torture. The Finnish Immigration Service has also stated that the complainant has given contradictory information about his tribe, the languages he speaks and travel routes to Finland. The complainant, however, challenges that assessment and claims that certain contradictions were owing to translation errors. Further, the Helsinki Administrative Court justified its decision by stating that activities of the Front could not take place in parts of Angola other than the Cabinda area. The Court also made reference to an "AB language analysis statement" of 27 January 2010, which states that the appellant speaks a form of Portuguese which is clearly from Angola and mostly from the Lobito region. However, the complainant submits that the said language analysis statement also notes that that Cabinda origin is not excluded on the grounds of a person speaking basic Portuguese. The complainant maintains that throughout the procedure he made coherent statements and provided supporting medical evidence of past torture and serious harm. His statements were plausible and did not run counter to known fact. The country of origin information concerning the human rights situation in Angola supported his statements.

3.3 The complainant maintains that the State party authorities never carried out a comprehensive investigation of his need for protection. He made a request for an oral hearing to the Helsinki Administrative Court, but the Court ruled, without further arguments, that an oral hearing would be manifestly unfounded. He maintains that the risk of being persecuted and tortured in Angola for him is both personal and present. His past activities are known to the authorities, he has been arrested and tortured in the past and he is a traumatized torture victim.

State party's observations on admissibility and the merits

4.1 By note verbale of 25 April 2013, the State party submitted its observations on the admissibility and the merits. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The Aliens Act of the State party provides for protection for the applicant if there is a "real risk of being subjected to serious harm."[4] The law further defines "serious harm" as the death penalty or execution; torture or other inhuman or degrading treatment or punishment; serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

4.2 The State party further submits that such protection from removal from the country is offered if the authorities of the State party are "convinced of the veracity of the application"[5] with regard to the applicant's need for international protection. The authorities

[3] The complainant makes references to different reports issued by the Office of the United Nations High Commissioner for Refugees (it is not clear which specific report is meant here); Amnesty International annual report, 2010; the United States of America Department of State country reports on human rights practices in Angola of 2009 and 2011; and Human Rights Watch report "Angola: end case against Cabinda rights defenders" (2010).

[4] Section 88, para. 1, of the Aliens Act, 301/2004.

[5] Section 98, para. 2, of the Aliens Act, 323/2009.

make such a finding by taking into account the applicant's statements and "real time information of the circumstances … obtained from various sources".[6] The applicants are issued a continuous residence permit, if refusing one would be "manifestly unreasonable with regard their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position".[7]

4.3 The State party submits that the Immigration Service took into account the human rights situation in Angola when deciding on the case. The human rights situation has improved since the peace treaty signed in 2002, after 27 years of civil war. Small conflicts that still exist, "do not pose a threat to civilians". The humanitarian situation in Angola also shows improvement.

4.4 The complainant's role in the Front for the Liberation of the Enclave of Cabinda, has been assessed as "minor". According to the assessment, the complainant does not have a particular profile as a "political actor". The arrest that the complainant has reported appears to be coincidental. The Immigration Service has stated that it appears unlikely that the authorities in Angola would be interested in him or that he would be in danger of being arrested again. The sources available to the Immigration Service, do not mention any Front activity outside the Cabinda area. Overall, the complainant's description of the facts was "vague" and "unspecified".

4.5 The State party submits that in regard to the medical statement provided by the complainant, while the scars are compatible with his story, the statement does not show that the assault was owing to the political activity of the complainant. Mr. X has provided conflicting information regarding his tribe, the languages that he speaks and his travel arrangements before leaving Angola. That conflicting information weakens the credibility of the application.

4.6 In regard to the proceedings before the Administrative Court, the State party submits that the Court also rejected the complainant's arguments. The Court held that despite a "partly unsatisfactory" safety and human rights situation, Angola could not be considered so unsafe that the complainant could not return there.

4.7 The State party further submits that the medical certificates dated 6 June 2011, 12 October 2010 and 19 October 2012 were submitted to the Committee, but were not provided to the Immigration Service during the asylum proceedings. In addition, the medical certificate of 19 October 2012 was not provided to the Immigration Service, the Administrative Court or the Supreme Administrative Court. Those medical certificates show that the complainant suffers from "mild mental health problems". The State party submits however that psychiatric treatment is available in Angola and that this should not be a reason to grant a residency permit to the complainant.

4.8 The State party submits that on 1 November 2012, the complainant applied for a new application for international protection in Finland, based, inter alia, on the medical certificate dated 19 October 2012. The State party therefore requests that the case be considered only after the final decision of the national authorities has been issued.

[6] Ibid., para. 3.

[7] Section 52, para. 1, of the Aliens Act, 323/2009.

Complainant's comments on the State party's observations on admissibility and the merits

5.1 In reply to the State party's observations, on 18 June 2013, the complainant submitted that his new application for asylum had been rejected by the Immigration Service on 30 January 2013. On 31 December 2013, the Helsinki Administrative Court further rejected the complainant's appeal, stating that he could not be considered to be in vulnerable position and no new grounds were provided to reconsider the outcome. The complainant, through his counsel, filed leave to appeal to the Supreme Administrative Court.[8]

5.2 The complainant submits that the new medical information that was provided by him, dated 26 May 2013 and 1 December 2013, showed that he had regular contact with the doctor at the Centre for Torture Survivors. The complainant also claims that his health condition has deteriorated during the present process and that he is being supported by various medications, antidepressants and painkillers.

State party's additional observations

6. By note verbale of 10 April 2014, the State party submitted its further observations. It reiterated its previous observations on the author's failure to exhaust domestic remedies, because his request for leave to appeal to the Supreme Administrative Court was still pending. Regarding the complainant's new appeal, which was rejected by the Immigration Service, the State party submits that it did not contain any new grounds justifying international protection. The Immigration Service considered that the complainant's health status was not a basis for issuing a residence permit. On 10 July 2014, the State party informed the Committee that the Supreme Administrative Court had rejected the complainant's leave to appeal in its decision dated 17 April 2014.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case, the State party has recognized that the complainant has exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

[8] On 9 May 2014, the complainant, through his counsel, informed the Committee that the Supreme Administrative Court had rejected his leave to appeal in its decision dated 17 April 2014.

8.2 The issue before the Committee is whether the removal of the complainant to Angola would violate the State party's obligation under article 3 of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Angola. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country. The aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

8.4 The Committee notes that the State party itself has recognized that the human rights situation in Angola constitutes a matter of concern. The Committee further notes that Angola signed the Convention on 24 September 2013, but has yet to ratify it. It also notes that in its recent review of Angola, the Human Rights Committee, when examining the general human rights situation there, expressed, inter alia, its concern at "information, including from the State party, of arbitrary arrests and detentions, incommunicado detention and detention in military custody by the police or security forces in the State party, in particular of sympathizers of the Front for the Liberation of Cabinda in the enclave of Cabinda, as well as human rights activists for alleged crimes against the security of the State" (CCPR/C/AGO/CO/1). The Human Rights Committee further expressed its concern at "reports of arbitrary and extrajudicial killings by security forces in the State party, in particular those which occurred in the province of Huambo in 2010, as well as during the counter-insurgency against the Front for the Liberation of the Enclave of Cabinda in 2010" (ibid.).

8.5 The Committee also recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[9] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case (para. 9).

8.6 The Committee takes note of the medical evidence presented by the complainant, including psychiatric examinations. A medical certificate dated 12 October 2010 states that because of his trauma, the patient needs intensive mental health care and long-term rehabilitation therapy for trauma. The certificate further states that the complainant is "extremely sensitive to violence". The examination dated 6 June 2011 found a scar on the right cheekbone, "which is most likely to have been caused by having been struck with the butt of a gun, as the patient explained". The doctor conducting the examination was of the opinion that the mental and physical symptoms displayed by the patient were caused by

[9] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

"brutal violence". The Committee takes note of the submission by the State party that the injuries indicated in the medical statements are only minor and that the medical documentation in question does not establish whether the injuries were the consequence of torture or ill-treatment. The Committee observes, however, that the medical certificate provided by Mr. X states that the complainant's medical symptoms are compatible with the symptoms of someone who has suffered brutal violence and inhuman imprisonment conditions. It also considers that the State party, in the light of those doubts, could have, for example, ordered an additional examination of the complainant in order to reach a fully informed conclusion on the matter.

8.7 The Committee notes that the complainant participated in the activities of the Front for the Liberation of the Enclave of Cabinda for four years by collecting money and items and sending them to fighters belonging to the Front in Cabinda, as well as sharing intelligence information on the government armed forces, and that his claim in that respect remains unrefuted by the State party. The Committee observes that, owing to the complainant's political activities, his previous imprisonment and torture, he is most likely to attract the attention of the authorities upon return to Angola, thus significantly increasing the risk of his being arrested and tortured, if returned.

8.8 In light of those considerations read as a whole, and taking into account the reports regarding the general human rights situation in Angola, especially regarding political activists in the enclave of Cabinda, which particularly affects members of the opposition, and in view of the complainant's past political activities in Angola, his previous imprisonment and detailed description of torture and ill-treatment suffered there, supported by substantiating elements adduced as proof thereof by the complainant, such as medical documentation, the Committee considers that the material before it is sufficient to conclude that there are substantial grounds for believing that the complainant risks being subjected to torture if returned to Angola.

9. The Committee, acting under article 22 (7) of the Convention, concludes that there are substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture by government officials if returned to Angola. The Committee therefore concludes that the deportation of the complainant to Angola would amount to a breach of article 3 of the Convention.

10. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainant to Angola or to any other country where there is a real risk of him being expelled or returned to Angola. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of the transmittal of the present decision, of the steps it has taken in response to the pre ent decision.